

EXTENSION OF MEDICARE ENFORCEMENT INSTRUCTION ON SUPERVISION REQUIREMENTS FOR OUTPATIENT THERAPEUTIC SERVICES IN CRITICAL ACCESS AND SMALL RURAL HOSPITALS THROUGH 2014

SEPTEMBER 9, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 4067]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4067) to provide for the extension of the enforcement instruction on supervision requirements for outpatient therapeutic services in critical access and small rural hospitals through 2014, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

| | Page |
|---|------|
| Purpose and Summary | 1 |
| Background and Need for Legislation | 2 |
| Committee Consideration | 2 |
| Committee Votes | 2 |
| Committee Oversight Findings | 4 |
| Statement of General Performance Goals and Objectives | 4 |
| New Budget Authority, Entitlement Authority, and Tax Expenditures | 4 |
| Earmark, Limited Tax Benefits, and Limited Tariff Benefits | 4 |
| Committee Cost Estimate | 4 |
| Congressional Budget Office Estimate | 4 |
| Federal Mandates Statement | 5 |
| Duplication of Federal Programs | 5 |
| Disclosure of Directed Rule Makings | 5 |
| Advisory Committee Statement | 5 |
| Applicability to Legislative Branch | 5 |
| Section-by-Section Analysis of the Legislation | 6 |

PURPOSE AND SUMMARY

H.R. 4067 provides for the reinstatement of the calendar year 2013 Medicare enforcement instruction on physician supervision re-

quirements for outpatient therapeutic services in critical access and small rural hospitals through the end of calendar year 2014.

BACKGROUND AND NEED FOR LEGISLATION

The Medicare program is a health care program for seniors and those with disabilities, and serves an important function in providing access to health care services for those in need of care. Authorized by Congress in 1965, it continues to serve patients in both rural and urban areas of the country.

Beginning in calendar year 2009, the Centers for Medicare and Medicaid Services (CMS) created new requirements on medical providers to provide direct supervision of certain outpatient therapy services, but created a moratorium for critical access hospitals and small rural hospitals for a period of four years. The moratorium ended on January 1, 2014.

During calendar year 2014, the Committee had become aware of confusion among rural providers related to which services and instances would fall under the new requirements. In addition, the continued work of the Advisory Panel on Hospital Outpatient Payment related to identifying the appropriate level of supervision for such services appeared to add to provider confusion. While the Medicare program currently does not enforce Federal requirements related to direct supervision for certain outpatient therapeutic services, providers advocate that extant confusion could lead to access issues for patients in need of care.

COMMITTEE CONSIDERATION

On July 30, 2014, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 4067 reported to the House, without amendment, by a record vote of 31 yeas and 11 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Upton to order H.R. 4067 reported to the House, without amendment, was agreed to by a record vote of 31 yeas and 11 nays. The following reflects the record votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS
ROLL CALL VOTE # 46**

BILL: H.R. 4067, a bill to provide for the extension of the enforcement instruction on supervision requirements for outpatient therapeutic services in critical access and small rural hospitals through 2014

AMENDMENT: A motion by Mr. Upton to order H.R. 4067 favorably reported to the House. (Final Passage)

DISPOSITION: AGREED TO, by a roll call vote of 31 yeas and 11 nays

| REPRESENTATIVE | YEAS | NAYS | PRESENT | REPRESENTATIVE | YEAS | NAYS | PRESENT |
|-----------------------|------|------|---------|-----------------|------|------|---------|
| Mr. Upton | X | | | Mr. Waxman | | X | |
| Mr. Hall | X | | | Mr. Dingell | | | |
| Mr. Barton | X | | | Mr. Pallone | | X | |
| Mr. Whitfield | | | | Mr. Rush | | | |
| Mr. Shimkus | X | | | Ms. Eshoo | X | | |
| Mr. Pitts | X | | | Mr. Engel | | | |
| Mr. Walden | X | | | Mr. Green | X | | |
| Mr. Terry | X | | | Ms. DeGette | | X | |
| Mr. Rogers | | | | Mrs. Capps | | X | |
| Mr. Murphy | X | | | Mr. Doyle | X | | |
| Mr. Burgess | X | | | Ms. Schakowsky | | | |
| Mrs. Blackburn | X | | | Mr. Matheson | | | |
| Mr. Gingrey | X | | | Mr. Butterfield | | X | |
| Mr. Scalise | | | | Mr. Barrow | X | | |
| Mr. Latta | X | | | Ms. Matsui | | | |
| Mrs. McMorris Rodgers | | | | Ms. Christensen | | | |
| Mr. Harper | X | | | Ms. Castor | | X | |
| Mr. Lance | X | | | Mr. Sarbanes | | X | |
| Mr. Cassidy | X | | | Mr. McNeerney | X | | |
| Mr. Guthrie | X | | | Mr. Braley | X | | |
| Mr. Olson | X | | | Mr. Welch | | X | |
| Mr. McKinley | X | | | Mr. Lujan | | X | |
| Mr. Gardner | X | | | Mr. Tonko | | X | |
| Mr. Pompeo | | | | Mr. Yarmuth | | X | |
| Mr. Kinzinger | X | | | | | | |
| Mr. Griffith | X | | | | | | |
| Mr. Bilirakis | X | | | | | | |
| Mr. Johnson | X | | | | | | |
| Mr. Long | X | | | | | | |
| Mrs. Ellmers | X | | | | | | |

07/30/2014

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held hearings on this legislation.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 4067 is to provide the provider community an opportunity to verify the specific instances and services for which the supervision requirements for hospital outpatient therapeutic services will be enforced by Medicare contractors.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 4067 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

earmark, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 4067 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 12, 2014.

Hon. FRED UPTON,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4067, a bill to provide for the extension of the enforcement instruction on supervision requirements for outpatient therapeutic services in critical access and small rural hospitals through 2014.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lori Housman.

Sincerely,

ROBERT A. SUNSHINE
(For Douglas W. Elmendorf).

Enclosure.

H.R. 4067—A bill to provide for the extension of the enforcement instruction on supervision requirements for outpatient therapeutic services in critical access and small rural hospitals through 2014

H.R. 4067 would require the Secretary of Health and Human Services to continue to apply through calendar year 2014 an exception to requirements that certain outpatient therapeutic services furnished in critical access and small rural hospitals need to be provided under the direct supervision of physicians in the hospital. The Centers for Medicare and Medicaid Services (CMS) currently do not enforce federal requirements related to direct supervision for those services, and CBO anticipates that CMS would not initiate enforcement of such requirements in the near future under current law. Rather, those services are subject to supervision requirements established under state laws.

Therefore, CBO estimates that enacting H.R. 4067 would have no significant effect on the federal budget. Because enacting H.R. 4067 would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

The bill would not impose intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Lori Housman. The estimate was approved by Holly Harvey, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 4067 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 4067 specifically directs to be completed zero rule makings within the meaning of 5 U.S.C. 551.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Extension of enforcement instruction on supervision requirements for Outpatient Therapeutic Services in Critical Access and Small Rural Hospitals through 2014

Section 1 establishes that the Secretary of Health and Human Services shall apply through December 31, 2014 the enforcement instructions related to Hospital Outpatient Services provided by Critical Access and Small Rural Hospitals previously in effect until December 31, 2013.